

Hon. Benjamin Souede

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON,

PLAINTIFF,

vs.

JOSEPH GIBSON,

DEFENDANT.

No. 19CR53042

**DEFENDANT JOSEPH GIBSON'S
MOTION TO ALLOW FILING OF
GRAND JURY TRANSCRIPT**

Oral argument requested per UTCR 4.050

MOTION

Comes now Joseph Gibson, by and through D. Angus Lee, and James L. Buchal, and moves, pursuant to ORS 132.270(c), for an order allowing defendant to file the transcript of the grand jury proceeding herein, either in open court under seal for the benefit of the Court.

Argument

GOOD CAUSE EXISTS TO ALLOW FILING THE GRAND JURY TRANSCRIPT

While the transcript of grand jury proceedings is ordinarily secret, ORS 132.270 provides:

“Unless the court orders otherwise for good cause shown, the prosecuting attorney and the defense attorney may not copy, disseminate or republish the audio recording, the notes or report of a shorthand reporter, or a transcript prepared from the audio recording, notes or report, released pursuant to this subsection, except to provide a copy to an agent of the prosecuting attorney or defense attorney for the limited purpose of case preparation.”

Good cause exists here for presentation of the grand jury transcript to the Court.

Defendant Gibson wishes to present the grand jury transcript to the Court to establish that virtually the entire case presented to the grand jury, insofar as he was concerned, was presented

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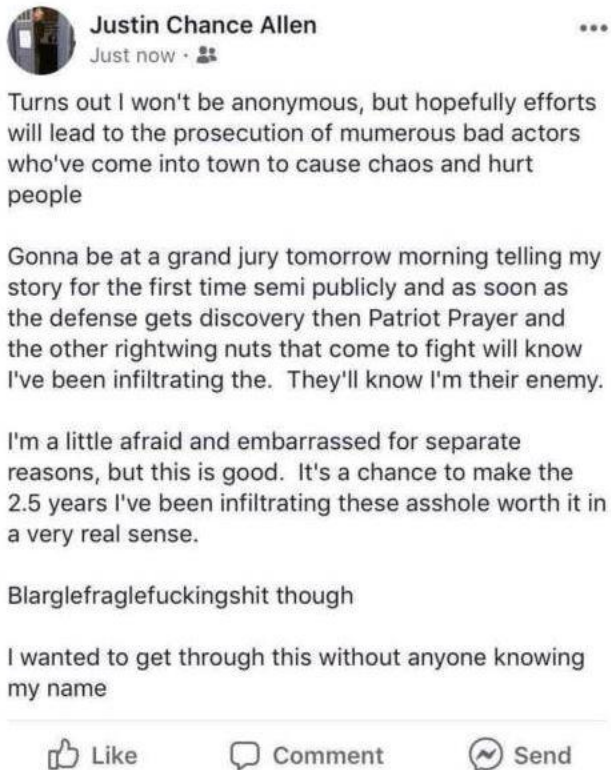
Wednesday, November 24, 2021

in blatant violation of ORS 132.320, which provides that, with exceptions not pertinent here, “*the grand jury shall receive no other evidence than such as might be given on the trial of the person charged with the crime in question*”. As laid out in the accompanying motion *in limine*, the State is expected to advance irrelevant evidence to prejudice the jury against defendant Gibson, evidence in violation of the hearsay rule, evidence in violation of the rule that witnesses must have personal knowledge of the facts, and improper opinion testimony that invades the province of the jury. We can confidently assert that such testimony is expected because the State unlawfully employed it to obtain an indictment.

To be sure, the transcript “may not be used to challenge the indorsement of an indictment ‘a true bill’ or the proceedings that led to the indorsement”. ORS 132.270(7)(b). But defendant Gibson does not propose to challenge the grand jury’s conclusion or the grand jury proceedings themselves. Defendant Gibson seeks to dismiss the case for selective prosecution, or in the interests of justice, and both of these motions make relevant the motives of the prosecution. The State’s egregious and wholesale violations of ORS 132.320 are part and parcel with its refusal to present Gibson’s testimony to the grand jury, its staggeringly false and prejudicial misrepresentations to this Court in connection with the arrest warrant, the timing of the arrest warrant, and a host of other factors that make this case stink. The grand jury transcript is relevant evidence for the motions.

There is also a powerful public interest in letting the People of Oregon see the nature of the proceedings that led to this indictment. Defendant Gibson does not threaten the secrecy of the grand jury members. There were only three witnesses, two of whom were police officers expected to testify at trial. The third, an Antifa associate who was apparently working undercover with

Cider Riot to create this case (and Cider Riot's companion civil action), appears to have no secrecy interest; he tweeted the following:



In short, there are no countervailing policy considerations that would support continued secrecy of the proceedings.

It has long been the law in Oregon that:

“... when the demand for promoting justice either in a civil or criminal case, outweighs the necessities for keeping the testimony before a grand jury secret, or when the reasons for keeping the testimony private have passed away, the court in its discretion should release the chain of secrecy and admit such evidence in order to prevent the claims of public justice from being unsatisfied.”

Gowin v. Heider, 237 Or. 266, 286-87, 386 P.2d 1, 10 (1963) (citation omitted). Such is the case here. Public justice requires that this Court and the public see just how the State obtained its indictment of Mr. Gibson.

Conclusion

The Court should allow defendant Gibson to file the grand jury transcript as an exhibit in connection with the pending motions, either directly or under seal.

DATED: November 24, 2021

s/ D. Angus Lee

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s/ James L. Buchal

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CERTIFICATE OF SERVICE

I, Carole A. Caldwell, hereby declare under penalty of perjury under the laws of the State of Oregon that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I am an employee of Murphy & Buchal LLP and my business address is P.O. Box 86620, Portland, Oregon 97286.

On November 24, 2021, I caused the following document to be served:

DEFENDANT JOSEPH GIBSON'S MOTION TO ALLOW FILING OF GRAND JURY
TRANSCRIPT

in the following manner on the parties listed below:

Brad Kalbaugh	()	(BY FIRST CLASS US MAIL)
Multnomah County District Attorney's Office	(X)	(BY E-MAIL)
600 Multnomah County Courthouse	()	(BY FAX)
1021 SW 4th Ave	()	(BY HAND)
Portland OR 97204	(X)	(E-Service, UTCR 21.100)
E-mail: brad.kalbaugh@mcdca.us		

/s/ Carole Caldwell